

JUN 12 2009

Stephan Harris, Clerk
Cheyenne

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

BEAVER CREEK LAND & CATTLE, LLC,)	
)	
Plaintiff,)	
)	
vs.)	No. 08-CV-00202J
)	
)	
PHILLIP A. WOLF,)	
)	
Defendant.)	

**ORDER DENYING DEFENDANT'S FEBRUARY 12, 2009
MOTION TO DISMISS**


The Motion to Dismiss (Docket Entry 10, at ¶¶15 through 22) addressed in this order is contained within defendant's Answer to the plaintiff's complaint. Plaintiff has filed a response in opposition to the motion (Docket Entries 12 and 13). The Court, having reviewed the parties' written submissions, FINDS that the defendant's Motion to Dismiss, which is included in his initial responsive pleading (Docket Entry 10), shall be DENIED, for the reasons stated below.

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a party may file a motion to dismiss for failure to state a claim upon which relief may

be granted. Defendant Wolf has attached to his pleading a document he has entitled "Affidavit in Support of Answer and Motion to Dismiss." At best, the Court views the defendant's submission as evidence that indeed there is a dispute as to numerous material facts and that defendant Wolf disagrees that plaintiff is entitled to the relief sought in this complaint. Much of the factual material he offers is more relevant as a defense to the plaintiff's claims or as some sort of affirmative defense. However the defendant's submissions are viewed, they are not a sufficient basis for granting a motion to dismiss for failure to state and claim, and as such, the defendant's motion to dismiss will be denied. Accordingly, it is therefore

ORDERED that the defendant's Motion to Dismiss included in Docket Entry 10 shall be, and is, **DENIED**.

Dated this 12th day of June 2009.


UNITED STATES DISTRICT JUDGE